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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 PERCY F. NEWBY, et al.,

12 Defendants.

CASE NO. C18-5978RBL

ORDER AFFIRMING SECOND ORDER  
DECLINING TO VOLUNTARILY  
RECUSE

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14 This matter is before the Court on Defendant Percy F. Newby's ("Newby") Second  
15 Demand for Recusal/Disqualification in the Alternative Dismiss This Case. Dkt. #88. The  
16 Undersigned previously affirmed an order of the Honorable Ronald D. Leighton, United States  
17 District Court Judge, declining to voluntarily recuse himself in this case. Dkt. #38. That order  
18 noted that Newby's request was based on Judge Leighton's prior rulings, which do not form  
19 "sufficient cause for recusal." *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986); *see*  
20 *also Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993) ("To warrant recusal,  
21 judicial bias must stem from an extrajudicial source."). Newby's second motion fails on both  
22 this and additional bases and the Undersigned affirms Judge Leighton's Order declining to recuse  
23 himself (Dkt. #92).

1 Newby's second motion is premised on his receipt of Plaintiff's motion to file an over-  
2 length brief after Judge Leighton had already granted the requested relief. Dkt. #88. Newby  
3 appears to believe that his due process rights were violated because he was not afforded an  
4 opportunity to respond to Plaintiff's motion to file an over-length brief. *Id.* But, as Judge  
5 Leighton partially points out, a motion to file an overlength brief is a same day motion addressed  
6 to the discretion of the court and may not be opposed, except at the court's request. LCR 7(f).  
7 Newby's second motion points only to actions taken by Judge Leighton in his judicial capacity  
8 and, even then, fails to establish an appearance of prejudice. *Preston v. United States*, 923 F.2d  
9 731, 734 (9th Cir. 1992) (recusal is an objective inquiry concerned with whether there is an  
10 appearance of bias); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980). Newby's  
11 motion entirely fails to establish that "a reasonable person with knowledge of all the facts would  
12 conclude that the judge's impartiality might reasonably be questioned." 28 U.S.C. §§ 144, 455;  
13 *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir. 1993). Judge Leighton properly  
14 declined to recuse himself.

15 Accordingly, the Court finds and ORDERS that Judge Leighton's Order (Dkts. #92)  
16 declining to recuse himself is AFFIRMED. The Clerk shall mail a copy of this Order to  
17 Defendant Percy F. Newby at his last known address.

18 DATED this 8 day of January 2020.

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22 RICARDO S. MARTINEZ  
23 CHIEF UNITED STATES DISTRICT JUDGE  
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